

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 16 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTOPHER SCOTT,

Defendant - Appellant.

No. 12-30088

D.C. No. 2:08-cr-00082-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Christopher Scott appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Scott contends that he is entitled to a sentence reduction based on the retroactive amendments to the Sentencing Guidelines that lowered the penalties for crack cocaine offenses. Scott is not eligible for a sentence reduction because his sentence was based on the parties' stipulation in a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C), and not "on a sentencing range that has subsequently been lowered by the Sentencing Commission," as required by section 3582(c)(2). *See Freeman v. United States*, 131 S. Ct. 2685, 2695-96 (2011) (Sotomayor, J., concurring). The plea agreement does not call for Scott to be sentenced within a particular Guidelines sentencing range as reflected in the Guidelines sentencing table, nor is any such Guidelines range expressly used in the agreement or evident from the agreement itself. *See id.* at 2697-98. Therefore, the district court lacked jurisdiction to modify Scott's sentence under section 3582(c)(2). *See United States v. Austin*, 676 F.3d 924, 930 (9th Cir. 2012).

AFFIRMED.